

# Exhibit C

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2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 -----X  
5 INDEPENDENT ASSET MANAGEMENT LLC and OLA  
6 HOLMSTROM,  
7 Plaintiffs,  
-against-  
8 DANIEL ZANGER,  
9 Defendant.  
0 -----X  
1 225 Broadway  
2 New York, New York  
3  
4 March 21, 2008  
5 9:56 a.m.  
6 EXAMINATION BEFORE TRIAL of  
7 DANIEL ZANGER, the Defendant herein, taken by  
8 the Plaintiffs, pursuant to a Notice, and held  
9 at the above-noted time and place, before  
0 David Sheldon, RPR, a Notary Public of the  
1 State of New York.  
2  
3  
4  
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2 APP E A R A N C E S:

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4 LAW OFFICE OF JOHN BALESTRIERE, P.L.L.C.  
5 Attorney for the Plaintiffs  
6 225 Broadway  
7 Suite 2700  
8 New York, New York 10007

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11 BY: CRAIG STUART LANZA, ESQ.  
12 BY: WILLIAM HOLLEMAN, ESQ.

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LAW OFFICES OF JONES DAY, ESQS.  
Attorneys for the Defendant  
222 East 41st Street  
New York, New York 10017

BY: THOMAS H. SEAR, ESQ.

ALSO PRESENT:  
GEORGE SZELE

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2 S T I P U L A T I O N S

3 IT IS HEREBY STIPULATED AND AGREED by and  
4 among counsel for the respective parties  
5 hereto, that the sealing and certification of  
6 the within deposition shall be and the same  
7 are hereby waived;

8 IT IS FURTHER STIPULATED AND AGREED that all  
9 objections, except as to the form of the  
10 question, shall be reserved until the time of  
11 trial;

12 IT IS FURTHER STIPULATED AND AGREED that the  
13 within deposition may be signed before any  
14 Notary Public with the same force and effect  
15 as if signed and sworn to before the Court.

16 IT IS FURTHER STIPULATED AND AGREED that  
17 counsel representing the witness examined  
18 herein shall be furnished with a copy of the  
19 within deposition without charge.

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2 D A N I E L Z A N G E R, the Defendant  
3 herein, after having first been duly sworn by  
4 David Sheldon, RPR, a Notary Public in and for  
5 the State of New York, was examined and  
6 testified under oath as follows:

7 EXAMINATION BY

8 MR. LANZA:

9 Q State your name for the record,  
10 please.

11 A Daniel Zanger.

12 Q State your address for the record,  
13 please.

14 A 4779 Collins Avenue, Number 903,  
15 Miami Beach, Florida, 33140.

16 MR. LANZA: The time is 9:57.

17 Mr. Zanger, I am going to ask you  
18 a series of questions. I ask you to  
19 just allow me to finish the question  
20 before you answer it.

21 If you need time to talk to your  
22 attorney, just let me know and I will,  
23 of course, give you that time. The only  
24 thing that I ask is that you give me an  
25 answer to the question that is asked

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prior to talking to your attorney.

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Q In October of 2004, you signed an  
agreement with Independent Asset Management;  
is that correct?

6

A I believe it is.

7

Q Why did you enter into that  
agreement?

9

A Well, I was under the impression  
that Independent Asset Management was going to  
in turn raise two hundred million dollars for  
me.

13

Q And did you speak with Independent  
Asset Management? I will refer to them as IAM  
from hereon in. Did you speak to any  
principal of IAM?

17

A George Szele.

18

Q When you spoke to George Szele,  
did he indicate his motivation for entering  
into the agreement?

21

A Yes.

22

Q What did he say?

23

A He basically said that with my  
trading record, which he heard was phenominal,  
that he could raise two hundred and that I

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2 would get 15 percent of the profits and he  
3 would get 5 percent.

4 Q Whose idea was it initially to  
5 enter into the agreement?

6 MR. SEAR: Objection to the form.

7 MR. LANZA: I will rephrase the  
8 question.

9 Q Prior to signing the agreement  
10 when you first met George Szele, did you  
11 approach him or did he approach you?

12 A He approached me.

13 MR. SEAR: Objection to the form.

14 Go ahead.

15 A He approached me.

16 Q When he approached you, what did  
17 he say?

18 MR. SEAR: Objection to the form.

19 A He said that with my trading  
20 record, he could raise two hundred million  
21 dollars.

22 Q How did you meet George Szele?

23 A He called me out of the blue one  
24 day.

25 Q When he called you, when you spoke

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2 on the phone, did he indicate to you how he  
3 got your information?

4 A From a friend of mine.

5 Q Who was that?

6 A Bryce James.

7 Q Did Bryce James tell you first  
8 that George Szele would be calling you?

9 A I don't remember that.

10 Q Around what time did these  
11 conversations take place?

12 A Boy, I couldn't nail it down  
13 precisely, to tell you the truth. Before the  
14 contract was signed.

15 Q Can you give us a year?

16 A 2004.

17 Q And in 2004, you had a domestic  
18 hedge fund; is that correct?

19 A Yes.

20 Q What was the name of that fund?

21 A Westwood Capital.

22 Q And you did not at that time have  
23 an offshore hedge fund; is that correct?

24 A That's correct.

25 Q Would you say it is common in the

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2 hedge fund family to have a domestic and  
3 offshore hedge fund?

4 A That I couldn't answer.

5 Q If you had an offshore fund in  
6 addition to a domestic fund, would it help you  
7 to attract investors to the domestic fund?

8 A I couldn't say that it could.

9 Q Well, can you say the Independent  
10 Funds Limited helped you to attract any  
11 investors to Westwood?

12 A None that I know of.

13 Q Just to be clear, there was never  
14 an occasion in which somebody had looked at  
15 the Independent Funds Limited first and had  
16 ended up in Westwood Capital Partners?

17 A None that I'm aware of.

18 MR. LANZA: At this time, I will  
19 now show you a document.

20 Let's have this marked as IAM's  
21 Exhibit 1.

22 (Whereupon, a document was marked  
23 as IAM's Exhibit 1 for identification as  
24 of this date by the Reporter.)

25 Q I have just handed you a document

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2 that was marked as IAM's Exhibit 1 (handing).

3 Do you recognize that document?

4 MR. SEAR: I object to the form.

5 I mean, the exhibit is a fairly  
6 voluminous document and I'm not sure if  
7 you are asking the witness if he  
8 recognizes the pages or just the pages  
9 generally. Answer it as best that you  
10 can. I'm not blocking the inquiry.

11 MR. LANZA: Sure.

12 A Well, it resembles from the front  
13 page, the front page resembles what I have  
14 seen previously, but I can't say for sure that  
15 it is the exact document that was presented to  
16 me.

17 Q By the exact document that was  
18 presented to you, are you referring to the  
19 Independent Funds Limited confidential  
20 offering memorandum?

21 A I am making reference to the  
22 Independent Funds confidential offering  
23 memorandum. I am basically saying this  
24 particular page here (indicating), this front  
25 page looks similar, but I can't say factually

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2 that it was what was presented to me.

3 Q But can you explain to us, you are  
4 familiar with what an offering memorandum is  
5 for an offshore hedge fund, is that correct,  
6 in general?

7 A Well, I understand the concept.

8 Q What do you understand that  
9 concept to be?

10 A That there's an outline and it is  
11 basically an outline.

12 Q Explain what you mean.

13 A Well, it is an outline of the  
14 offering.

15 Q If you can just sort of flesh that  
16 out. What do you mean by "outline"?

17 A It gives you the parameters of the  
18 offering.

19 Q Do you understand it to have any  
20 legal significance?

21 A Yes.

22 Q And in your experience, most hedge  
23 funds have offering memorandums; is that  
24 correct?

25 A Yes.

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2 Q Do these go out to potential  
3 investors?

4 A Yes.

5 Q I would like you to turn to page 7  
6 of the document.

7 A (Witness complies.)

8 Q Do you see where it says, "The  
9 trading manager"?

10 A Okay.

11 Q Have you read that, Mr. Zanger?  
12 Did you read it just now?

13 MR. SEAR: What do you mean by  
14 "it"?

15 MR. LANZA: The paragraph where it  
16 says, "The trading manager," the words  
17 "trading manager" on the left-hand side,  
18 but there is a paragraph to the right of  
19 it that begins with "the fund" and it  
20 ends with "dissolve."

21 A Okay.

22 Q Is it safe to say that that  
23 paragraph in sum and substance says that IAM  
24 according to this document is the trading  
25 manager for Independent Funds Limited?

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2 MR. SEAR: Objection to the form.

3 Answer it if you can.

4 A Do you want to restate the  
5 question?

6 Q Sure. According to this document,  
7 and according to what you just read, is  
8 Independent Asset Management the trading  
9 manager of the Independent Funds Limited?

10 A Well, I would have to say that it  
11 doesn't deny it.

12 Q So let's move onto page 17.

13 A Okay.

14 Q There is a paragraph there that  
15 says, "Risk control."

16 A Uh-huh.

17 Q Can you read that whole paragraph  
18 to yourself? You don't need to read it out  
19 loud.

20 A Okay.

21 Q Now, you traded for the  
22 Independent Funds Limited; correct?

23 MR. SEAR: Objection to the form.

24 Answer it.

25 A Yes.

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2 Q Now, according to what you just  
3 read, isn't it true that Independent Asset  
4 Management had a duty to continually monitor  
5 your positions as a trader?

6 MR. SEAR: Objection to the form.

7 A Can you repeat that again?

8 Q You just read a paragraph that  
9 indicates, "Risk control"; is that correct?

10 A Uh-huh.

11 Q According to that, Independent  
12 Asset Management had a duty to monitor your  
13 positions as a trader; is that correct?

14 MR. SEAR: Objection to the form.

15 A Well, I don't see in here where it  
16 says that Independent Asset will monitor.

17 Q Well, let me ask you this: Do you  
18 know what a stop loss level is?

19 A The question, as I understand it,  
20 you asked me if the Independent Asset would  
21 monitor.

22 MR. SEAR: He is asking you a  
23 different question.

24 Q I'm asking a different question.

25 Do you know what a stop loss

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2 level is?

3 A Yes, I know.

4 Q Can you explain what that means?

5 A It means when a stock hits a  
6 certain level, the asset will be sold.

7 Q Do you see that sentence there  
8 under risk control, it begins with fourth?

9 A Yes.

10 Q Can you read that out loud?

11 A "Fourth, proper exit points or  
12 stop loss levels are continuously identified  
13 and closely monitored."

14 Q And that sentence is referring to  
15 the trading manager, isn't that correct, are  
16 monitored by the trading manager?

17 MR. SEAR: Objection to the form.

18 A Yes.

19 Q So isn't it saying here that the  
20 trading manager had a duty to monitor stop  
21 loss limits on your trading?

22 MR. SEAR: Just note my objection  
23 to this line. You can answer it.

24 Asking him to interpret the legal  
25 significance of this paragraph having

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2 read it, there is no reference to him.

3 Answer it as best that you can, but I  
4 think the whole line is improper.

5 A Can you repeat the question?

6 Q Okay. According to what you read  
7 here, isn't that saying that the trading  
8 manager, namely IAM, had a duty to  
9 continuously monitor, identify stop loss  
10 levels; is that correct?

11 MR. SEAR: Objection to the form.

12 A Just repeat the same question.

13 Q Does what you read indicate that  
14 IAM had a duty to monitor stop loss levels?

15 MR. SEAR: Just note my objection  
16 to the form.

17 A IAM?

18 Q That's correct, IAM.

19 A It says here that they are  
20 continuously identified and closely monitored.

21 Q You traded for Independent Funds  
22 Limited?

23 A I did.

24 Q So wouldn't IAM have a duty to  
25 monitor your stop loss levels?

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2 MR. SEAR: Just note my objection  
3 to the form.

4                   A         Well, as I read it, it says, "The  
5                   trading manager will attempt stop losses."

6 Q will monitor; is that correct?

7 A Yes.

Q And the trading manager is IAM?

9                   A         The trading manager? The trading  
10          manager -- I can't see where it says that IAM  
11          will or will not.

12 Q Okay. I will move on.

13 You entered into an agreement  
14 with IAM; is that correct?

15 A Yes.

16 Q Was there anything else that went  
17 into determining whether or not you would work  
18 with IAM, apart from that agreement?

19 MR. SEAR: Objection to the form.

20 A Was there anything else that  
21 determined --

22 Q Did you have anything in addition  
23 to that agreement, any additional agreements  
24 with TAM?

25 A I had no additional written

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2 agreements.

3 Q Before you entered into that  
4 agreement, did you talk to anyone about the  
5 prospect of working for IAM?

6 MR. SEAR: Objection to the form.

7 You mean besides --

8 MR. LANZA: Look, it is a broad  
9 question. He can answer however.

10 A I talked to George Szele and  
11 that's it.

12 Q You only spoke to George Szele?

13 A As far as I know, I only spoke to  
14 George Szele.

15 Q You testified before that George  
16 Szele indicated that he would raise two  
17 hundred million dollars based on your track  
18 record; is that correct?

19 A Correct.

20 Q What other sorts of things did you  
21 and George discuss prior to signing the  
22 agreement?

23 A Well, we discussed my prior track  
24 record.

25 Q Anything else?

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2 A We discussed that he was employed  
3 by Goldman Sachs, he told me.

4 Q Did you discuss anything else  
5 about George Szele's background?

6 A That he was an employee of Goldman  
7 Sachs, a trader for Goldman Sachs, that  
8 basically he had proprietary-type of trading  
9 stuff, property-type of trading at Goldman  
10 Sachs and specifically about his record you  
11 are referring to?

12 Q Sure. That is what I am talking  
13 about, his background.

14 A His background is basically as a  
15 trader, he worked at Goldman Sachs. That's  
16 how I remembered it.

17 Q Before signing the agreement, did  
18 you discuss any of the provisions of the  
19 agreement?

20 MR. SEAR: Objection to the form.

21 You may answer.

22 A We went over a number of the  
23 sections.

24 Q Do you remember the substance of  
25 those discussions?

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2                   A         The discussions were that I would  
3                   get 25 -- of the 20 percent profits, I would  
4                   get 15 percent and he would get 5 percent,  
5                   that we would split the management fees  
6                   equally. Basically, he told me that I could  
7                   get out virtually at any time and he  
8                   reiterated that I could get out at any time if  
9                   things weren't working out and that was his  
10                  inducement for me to sign.

11                  Q         Was this memorialized in any way?

12                  A         What do you mean by  
13                  "memorialized"?

14                  Q         Was this written down in any way,  
15                  by e-mail or --

16                  MR. SEAR: Objection to the form.

17                  A         I have no recollection that it was  
18                  done by e-mail.

19                  Q         Did you communicate with George by  
20                  e-mail?

21                  MR. SEAR: Objection to the form.

22                  A         There have been e-mails.

23                  Q         How about instant messenger?

24                  A         Yes. There have been instant  
25                  messengers.

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2 Q You read the agreement before  
3 signing it?

4 A Yes.

5 Q When was the last time that you  
6 read the agreement?

7 MR. SEAR: I don't think it is  
8 fair to go into what we did in terms of  
9 discussions preparing the witness for  
10 his testimony.

11 MR. LANZA: I will withdraw my  
12 question.

13 Q Without going into any prep that  
14 you had done with your attorney, when was the  
15 last time that you read the agreement?

16 A I can't give an exact date.

17 Q Did you read the agreement after  
18 you signed it?

19 A I can't recall that I did.

20 Q How would you characterize your  
21 knowledge of your contractual obligations  
22 under the agreement?

23 MR. SEAR: Objection to the form.

24 A That is fairly general.

25 Q You mean that you characterize

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2 your knowledge as fairly general?

3 A General.

4 Q So, as best that you can recall,  
5 what were your obligations under the  
6 agreement?

7 MR. SEAR: I object. Answer it as  
8 best that you can.

9 A I was to trade the account.

10 Q And what was Independent Asset  
11 Management required to do under the agreement?

12 MR. SEAR: The same objection.  
13 Answer it.

14 A Well, as I remember it now, in  
15 general, it was just basically to raise cash.

16 Q How long was the agreement for?

17 A There were various provisions in  
18 there.

19 Q You indicated that under the  
20 agreement, you were to trade the account; is  
21 that correct?

22 A Uh-huh.

23 Q Based on your recollection under  
24 the agreement, how many days, weeks, months or  
25 years were you to trade the account?

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2                   A         Again, I think that there are  
3                   various provisions in there, but there's an  
4                   overall clause for five years.

5                   Q         What were the bases for  
6                   terminating the agreement?

7                   A         At this time?

8                   Q         In the agreement itself, from what  
9                   you can recall, was there a basis for  
10                  terminating the agreement outlined in the  
11                  agreement?

12                  A         There appears so, yes.

13                  Q         What were those bases?

14                  A         Well, I can't recall.

15                  MR. LANZA: I'm going to show you  
16                  a copy of the agreement. Let's have  
17                  this marked as IAM's Exhibit 2.

18                  (Whereupon, a document was marked  
19                  as IAM's Exhibit 2 for identification as  
20                  of this date by the Reporter.)

21                  Q         Dan, take a look at that  
22                  (handing). Do you recognize what I just  
23                  handed you, what is marked as IAM's Exhibit 2?

24                  A         What was the question? Just that  
25                  I have read it?

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MR. LANZA: Can you read back the  
question?

4

(Whereupon, the referred to  
question was read back by the Reporter.)

6

THE WITNESS: Yes.

7

Q What do you recognize that to be?

8

A An agreement.

9

Q Specifically, what agreement?

10

A An agreement between Dan Zanger  
and Independent Asset Management.

12

Q When was that agreement signed?

13

A Well, the date says, "10/20/04."

14

Q So is it fair to say that you were  
required to adhere to the agreement as of  
October 20, 2004?

17

MR. SEAR: Objection to the form.

18

A It is fair.

19

Q Let's look at the second page of  
the agreement. Let's look at point four at  
the bottom of the page. Do you see that?

22

A Uh-huh.

23

Q Do you see that first sentence  
there that begins with "it is understood"?

25

A Okay.

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2 Q Can you read that out loud?

3 A "It is understood by all parties  
4 that DZ will be the sole manager in assets it  
5 has brought in for Class Z and IAM has no  
6 intention to replace or terminate DZ from the  
7 management of Class Z shares so long as DZ  
8 remains within the guidelines outlined herein  
9 and is not in breach."

10 Q In your own words, can you explain  
11 what that means?

12 MR. SEAR: Objection to the form.

13 A It says that "DZ will be the sole  
14 manager."

15 Q The sole manager of what, to be  
16 clear?

17 A On assets that DZ has brought in.

18 Q Can you explain what that means,  
19 assets that DZ has brought in?

20 MR. SEAR: Objection to the form.

21 A To me, it means cash.

22 Q Can you read the next sentence?

23 A "If for some reason IAM needs to  
24 terminate this agreement and/or DZ as manager,  
25 DZ is free to redeem or remove all capital it

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2 has raised or brought into Class Z shares for  
3 the purpose of DZ's management program within  
4 the terms and guidelines of this agreement."

5 Q What does that mean?

6 MR. SEAR: I object. You can  
7 answer.

8 Q In your own words, can you explain  
9 what that sentence means?

10 A Well, it says here "if for some  
11 reason IAM needs to terminate this agreement  
12 and/or DZ as manager, DZ is free to redeem or  
13 remove all capital it has raised or brought  
14 into Class Z for purpose of DZ's management  
15 program."

16 Q There are two words there. One  
17 word is "raised" and the other word is  
18 "brought."

19 A Correct.

20 Q Can you explain what those words  
21 mean in this context?

22 A Well, it is kind of confusing.  
23 Well, it makes it confusing instead of he.

24 Q Just to be clear, what you are  
25 saying is what is confusing is that the

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2 pronoun "it" is there as opposed to the terms  
3 "raised" or "brought"; is that correct?

4 MR. SEAR: Objection to the form.

5 A Yes. It troubles me. It just --

6 Q Is it safe to say, you really  
7 can't explain what that sentence means?

8 MR. SEAR: Objection to the form.

9 A I will leave it up to my attorney  
10 to fully explain it.

11 Q How about the third sentence? Do  
12 you want to take a look at the third sentence,  
13 which begins with "IAM acknowledges"?

14 A "IAM acknowledges that DZ has  
15 control of redeeming from or remaining in IFL,  
16 the assets it has placed or raised into  
17 Class Z under the terms and guidelines of this  
18 agreement."

19 Q Do you see that there are terms  
20 "placed" or "raised" there? Can you explain  
21 what those words mean in this context?

22 A Well, it still bothers me. I  
23 think it should be something else, but it is  
24 what it is and it says, "IAM acknowledges that  
25 DZ has control of redeeming or remaining in

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2 IFL, the assets it has placed."

3 Q So let me just sort of ask you a  
4 specific question: You put in, approximately,  
5 five million dollars at the inception of this  
6 agreement, correct, or sometime not too long  
7 after you signed the agreement; is that  
8 correct?

9 A Yes.

10 Q Do you read that this last  
11 sentence, do you understand that to mean that  
12 you could have removed that five million  
13 dollars at any period of time?

14 A Well, the sentence kind of implies  
15 that I can redeem or remove it at any time  
16 that I have complete control over my own  
17 assets.

18 Q How about without just referring  
19 to the sentence per se? Is it your  
20 understanding that according to this  
21 agreement, the agreement that you had with  
22 IAM, you could have removed that five million  
23 dollars at any period of time?

24 MR. SEAR: Objection to the form.

25 Answer it as best that you can.

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A Can you repeat the question?

3

MR. LANZA: Read it back.

4

(Whereupon, the referred to  
question was read back by the Reporter.)

5

THE WITNESS: Without referring to  
this agreement or this sentence?

6

Q No. Just to be clear, I was

7

asking you questions based on your  
interpretation of this sentence before. I am  
not referring to that sentence per se anymore.  
I am just saying in this agreement that you  
signed with IAM, according to this agreement,  
could you remove that five million dollars at  
any time?

16

A It is my understanding that yes.

17

Q So hypothetically, you could have  
redeemed your shares as early as July of 2005?

18

A Hypothetically, yes.

19

Q Even May of 2005?

20

A Yes.

21

Q You could have removed that five  
million dollars an hour after you put it in;  
is that correct?

22

A Well, not only did I kind of get

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2 that inference from the agreement, George  
3 specifically told me that I was free to take  
4 my money out at any time.

5 Q Did you have an obligation to even  
6 put any money in?

7 MR. SEAR: Objection to the form.

8 A Well, I believe that I did have an  
9 obligation to put the money in.

10 Q So the way that you understood the  
11 agreement, to be clear, you had an obligation  
12 to put the money in, but you could have taken  
13 it out immediately thereafter?

14 A Well, I never had any concepts to  
15 take it out at all for any period of time. I  
16 did intend to take it out once the fund got  
17 going.

18 Q Just to be clear, I wasn't asking  
19 about your intention. I was asking about what  
20 you understand the agreement to be. You  
21 indicated before that this agreement obligated  
22 you to put five million dollars in; is that  
23 correct?

24 A Yes.

25 Q You also indicated that that

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2 agreement didn't obligate for you to have that  
3 money in for any specific period of time?

4 A Yes.

5 Q So according to your understanding  
6 of the agreement, the agreement effectively  
7 says that you can put five million dollars in  
8 say on a Monday morning at 9:00 and remove it  
9 at 9:15 that same day?

10 MR. SEAR: Objection. Answer it.

11 A I am basically under the  
12 understanding that I had the freedom to do  
13 that.

14 Q Alright. I want to sort of direct  
15 your attention to point seven. You don't have  
16 to read it out loud, but I kind of ask you to  
17 just read that.

18 A Okay.

19 Q That paragraph discusses a term of  
20 the agreement; is that correct?

21 A It says, "The term of this  
22 agreement."

23 Q It says that the term of the  
24 agreement is five years; is that correct?

25 A Yes.

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2

Q What is the term referring to?

3

MR. SEAR: Objection to the form.

4

A Five years is referring to this  
agreement.

6

Q Can you point to any other part of  
that agreement that indicates a different term  
of the agreement?

9

MR. SEAR: Objection to the form.

10

A I'm not an attorney.

11

Q So I will take that as a no at  
this time?

13

A I wouldn't say that. I just said  
that I'm not an attorney. I am reading the  
thing because you are asking me does it state  
any other points. I don't have the agreement  
memorized, but there are a number of areas  
here.

19

Q Do you want to take some time to  
point that out?

21

A No. Again, I am not an attorney,  
but it appears that there are a number of  
areas.

24

Q I will move on. Let's turn to  
page 2. Do you see paragraph 1 on page 2?

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2 A Yes.

3 Q Do you see where it says,

4 "Leverage" under subheading A? It says,

5 "Leverage will be limited to four to one

6 initially"?

7 A Yes.

8 Q Can you explain what leverage is?

9 A Leverage is leverage, borrowing  
10 money and using that to finance your -- your  
11 wherewithal.12 Q So what does it mean when that  
13 says, "Leverage four to one"?14 A You will have four times your cash  
15 value.16 Q So explain what that means, just  
17 to be clear.18 A It means if you have \$100, you can  
19 borrow \$400.20 Q And you have subheading B under  
21 that. You have the term "liquidity is  
22 important under any market condition." Do you  
23 see that?

24 A Yes.

25 Q Can you explain what liquidity

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2 means?

3 A Well, it is the ability to move  
4 products around quickly.

5 Q Can you elaborate on that? I'm  
6 not clear on what you mean by that.

7 A It means the ability to be able to  
8 sell something quickly. It is a form of  
9 quickly, you know. It is up for  
10 interpretation, but --

11 MR. SEAR: Off the record.

12 (Whereupon, an informal discussion  
13 was held off the record.)

14 Q Can you explain to us -- there is  
15 a point C and the term "redemptions." Can you  
16 explain that?

17 A It says, "If any amounts are  
18 redeemed within one year, two percent of such  
19 amount shall be forfeited," which goes back to  
20 your prior question.

21 Q How about point D, "full  
22 disclosure of positions will be necessary at  
23 all times." Can you explain what that means?

24 A Well, full disclosure of positions  
25 will be necessary at all times. That means

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2           the disclosure of your positions will be  
3           necessary at all times, that basically anybody  
4           will be able to see your positions, as  
5           necessary, at all times.

6           Q       How are positions disclosed,  
7           generally?

8           A       Well, um, there's -- you can log  
9           into the system and see your positions.

10          Q       You mean the computer system that  
11           you can log in?

12          A       Yes.

13          Q       What is the name of that system  
14           that you use?

15          A       The one that we were using was  
16           Redi, R-E-D-I.

17          Q       Now, point E, it says, "DZ shall  
18           remain in full compliance at all times with  
19           prime broker's limits, rules or guidelines."  
20           Can you explain what that means in layman's  
21           terms?

22          A       Well, it means that I will be in  
23           full compliance at all times with trying to be  
24           within broker's limits, rules and guidelines.

25          Q       That is essentially what I just

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ZANGER

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2 read. Can you sort of elaborate on that?

3 A It pretty much means what it says.

4 Q So I will take that as sort of no,  
5 that you don't have anything to add to that?

6 A Correct.

7 Q How about point F? Do you see it  
8 says that "DZ must remain transparent and  
9 compliant on all levels at all times to IFL  
10 and IAM." Can you in layman's terms explain  
11 what it means to be transparent and compliant  
12 in this context?

13 A Again, the positions must be able  
14 to be seen and that you must be compliant with  
15 guidelines.

16 Q With guidelines? Where are you  
17 getting the term "guidelines" from?

18 A Well, I am getting it from the  
19 English library, basically.

20 Q Understood, but I mean, is the  
21 term "guidelines" used in that sentence that  
22 we just looked at?

23 A In that sentence that we just  
24 looked at, it is not.

25 Q But you understand that the term

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2 "compliant" means compliant with guidelines;  
3 is that correct?

4 A Yes.

5 Q Is it broader than guidelines?

6 MR. SEAR: Objection to the form.

7 A Well, I can't interpret that.

8 Q Let me ask you, let me give you a  
9 specific situation and you can tell me about  
10 subsection F, how it would apply. Let's say  
11 IAM requested you to sell a position at a  
12 specific period of time. Would you be  
13 required to under subsection F?

14 A If IAM asked me to sell a  
15 position, would I be required to?

16 Q That's correct.

17 A No.

18 Q Take a look at the next sentence.  
19 It says something about draw downs below  
20 20 percent. Do you see that?

21 A Yes.

22 Q Can you explain what a draw down  
23 is?

24 A Well, draw down is referring to a  
25 high water mark.

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Q Explain what is a high water mark.

3

A A high water mark is the absolute high point that a fund reaches at any one given time.

6

Q What is a draw down in relation to a high water mark?

8

A Well, any amount below the high water mark is called a draw down.

10

Q So, effectively, what this is saying is if you go below 20 percent of the high water mark, that agreement may be terminated; is that correct?

14

A That's what it says here.

15

Q There is also reference in this agreement to your trading methodology?

17

A Okay.

18

Q Let me find it. It says it on page 1, the last whereas, "whearas, it is understood by IAM."

21

A Page 1?

22

Q Yes. Go to the first page, where it has whereas. It says, "DZ's trading methodology." Just to be clear, DZ is you here; is that correct?

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2 A Yes.

3 Q So it talks about trading, your  
4 trading methodology or your methodology. Can  
5 you explain what that is?6 A Do you want me to explain what my  
7 trading methodology is?8 Q In sum and substance. You don't  
9 have to go in detail, I mean?

10 A It is my acquired way of trading.

11 Q But --

12 A You want the exact methodology,  
13 you know?

14 Q Is there a term for it?

15 A Yes. Basically, I trade off  
16 momentum. I am highly dependent on momentum.

17 Q What does that mean?

18 A I am very dependent on leverage.

19 Q Let me ask that. What does it  
20 mean to be dependent on momentum?21 A That is the velocity and change  
22 and rate of change of stocks.23 Q You are dependent on stocks moving  
24 a particular way; is that correct?

25 A Yes.

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ZANGER

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2 Q You say leverage is important; is  
3 that correct?

4 A My style.

5 Q And why is that?

6 A Well, because it is my style.

7 Q I will move on. It says some  
8 points, it says a couple of points in that  
9 same paragraph that I was referring to just a  
10 moment ago. It says, "It is understood by IAM  
11 that DZ -- it is understood by IAM that DZ  
12 wishes to arrange for the investment and  
13 transfer of USD five million and up to fifty  
14 million into an existing vehicle"; is that  
15 correct. It says that there?

16 A Yes, that's correct. It says that  
17 there, that's correct.

18 Q If you look on page 2 and you look  
19 at paragraph 1, the third line, it is still  
20 the first sentence, I believe, but the third  
21 line of paragraph 1, it also says, "USD five  
22 million up to fifty million"; is that correct?

23 A It says it here.

24 Q So just to be clear, did you  
25 suggest -- I will withdraw that question.

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Did you agree to put five million  
dollars or fifty million dollars in there?

4

5

A I agreed to put five million  
dollars in.

6

7

Q Then why does it say up to fifty  
million dollars?

8

9

10

A Well, my interpretation is that it  
gives me the option to add more if I so  
choose.

11

12

13

14

Q Did you ever discuss prior to  
signing this agreement with anyone an  
intention of putting more than five million  
dollars in there?

15

A Not that I can recall.

16

Q You never did?

17

18

A That's not what I said. I said  
that I don't recall that.

19

20

Q So you don't know how the terms  
and up to fifty million dollars got in there?

21

22

A Well, George wrote it in there.

That's how it got in there.

23

24

Q How do you know that George wrote  
it in there?

25

A I would assume that George or his

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2 representative wrote it in there.

3 Q You just testified a moment ago  
4 that you don't recall why it would be George  
5 that put it in there as opposed to you.

6 A I didn't write the agreement.

7 George wrote the agreement.

8 Q Didn't you modify the agreement?

9 A I never modified the agreement,  
10 none whatsoever.

11 Q You never made any modifications  
12 on the agreement?

13 A I don't recall ever making a  
14 modification on the agreement.

15 MR. LANZA: Let's move on. I'm  
16 going to show you the prime broker's  
17 agreement here. Let's have this marked  
18 as IAM's Exhibit 3.

19 (Whereupon, a document was marked  
20 as IAM's Exhibit 3 for identification as  
21 of this date by the Reporter.)

22 Q Mr. Zanger, why don't you take a  
23 look at that (handing)?

24 A Do you want me to read the whole  
25 thing?

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2 Q Just sort of take a look at it and  
3 then I will ask you a question about it in a  
4 moment.

5 MR. SEAR: Off the record.

6 (Whereupon, an informal discussion  
7 was held off the record.)

8 MR SEAR: For the record, IAM's  
9 Exhibit 3 is bates stamped five, six,  
10 seven, eight, nine, ten, eleven, twelve,  
11 thirteen, fourteen, fifteen and sixteen.

12 MR. LANZA: Just for the record,  
13 for some reason, there was a version out  
14 there with bates stamped number 004236  
15 in there. I assume the copies that you  
16 have shouldn't have it in there.

17 MR. SEAR: That's correct.

18 MR. LANZA: I appreciate you  
19 pointing it out and I apologize for  
20 handing you the wrong one.

21 Q Mr. Zanger, have you had a chance  
22 to look at IAM's Exhibit 3, what I just handed  
23 you?

24 A Okay. I browsed briefly through  
25 the pages, but I didn't read them thoroughly.

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Q Have you seen this document

3 before?

4

A I can't recall ever seeing it

5 before.

6

MR. SEAR: Objection to the form.

7

Q Let's turn to the third page of

8 that document. It is bates stamped 000007.

9

Do you see that?

10

A Yes.

11

Q Is that your name up on the top,

12

Daniel Zanger?

13

A Yes.

14

Q I just want to be clear, you have  
never seen this document before?

16

A I cannot recall seeing this  
document before.

18

MR. LANZA: Why don't we take a  
five-minute break?

20

MR. SEAR: Okay.

21

(Whereupon, a short recess was

22

taken.)

23

BY MR. LANZA:

24

Q Prior to the break, I handed you a

25

document marked as IAM's Exhibit 3; is that

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2 correct?

3 A Correct.

4 Q You said that you didn't recognize  
5 the document, am I correct, that you did not  
6 recognize the document?

7 A I don't recognize the document.

8 Q You have never seen this document  
9 before?

10 A I don't recall seeing this  
11 document before.

12 Q Were you aware that Goldman Sachs'  
13 execution in clearing had an agreement with  
14 Independent Funds Limited?

15 A The mere assumption. I can only  
16 assume that he had one.

17 Q You assume that there was an  
18 agreement, but you have never seen it?

19 MR. SEAR: Objection. He  
20 testified three times on his  
21 recollection.

22 Q We will move on. You knew that  
23 Goldman Sachs' execution in clearing had rules  
24 and regulations; is that correct?

25 A They had various rules and various

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2 regulations.

3 Q Had you ever taken a look at them?

4 A I don't recall ever taking a look  
5 at them.

6 Q Specifically, were you aware of  
7 their regulations with regards to margins?

8 A Again, they have various  
9 regulations, rules and they seem to float.

10 Q What do you mean by that?

11 A Well, they just seem to be  
12 modified periodically.

13 Q Okay. How do you know that they  
14 are modified periodically?

15 A Well, at times, I have been able  
16 to go out beyond two to one on margin and they  
17 never said anything.

18 Q But you have never been aware of  
19 their specific rules; is that correct?

20 MR. SEAR: Objection to the form.

21 A I am not aware of their specific  
22 rules insofar as the way that you are stating  
23 it.

24 Q Is it safe to say that you  
25 concluded that their rules changed because

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2 sometimes they didn't object to things that  
3 you did?

4 A Yes.

5 Q Let's sort of turn to the  
6 agreement itself again, which, I believe, was  
7 Exhibit 2. I am just going to ask you, in  
8 general, would you say that you complied with  
9 all U.S., federal and state and local laws  
10 when you were trading on behalf of IFL, the  
11 Independent Funds Limited?

12 MR. SEAR: Objection to the form,  
13 but answer as best that you can.

14 THE WITNESS: Can you repeat the  
15 question?

16 (Whereupon, the referred to  
17 question was read back by the Reporter.)

18 THE WITNESS: To the best of my  
19 ability.

20 Q What does it mean to comply with  
21 U.S., federal, state and local laws while  
22 trading?

23 A Pretty much exactly what you said.

24 Q I am confused. I just asked if  
25 you obeyed all U.S., federal, state and local

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2 laws. My question was, specifically, what  
3 does that mean to obey those laws?

4 MR. SEAR: He just answered it.

5 A To obey them.

6 Q So just to be clear, your answer  
7 is to obey laws means to obey laws; correct?

8 A Well, pretty much.

9 Q How about the applicable rules and  
10 regulations of Bermuda? Did you comply with  
11 them while trading?

12 A To my recollection, to the best of  
13 my ability, I did.

14 Q Are you aware of what those laws  
15 are?

16 A Well, I have never seen the laws  
17 that I can recall.

18 Q Do you work with a compliance  
19 officer?

20 MR. SEAR: Objection to the form.

21 Q When you were trading with IFL,  
22 did you have a compliance officer?

23 A A Bermuda compliance officer?

24 Q Any compliance officer.

25 MR. SEAR: We are talking about

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2                   Dan personally?

3                   MR. LANZA: Yes.

4                   A       I don't recall. I don't recall.

5                   Q       How about your other fund? Is  
6                   there a compliance officer there at Westwood  
7                   Partners?

8                   A       I don't recall a compliance  
9                   officer.

10                  Q       Did you comply with the CFTC and  
11                  NFA regulations?

12                  MR. SEAR: Objection to the form.

13                  Answer it as best that you can.

14                  A       I can't say that I'm aware of  
15                  those regulations.

16                  Q       My question was whether or not you  
17                  complied with the regulations.

18                  A       Well, if I am not aware of them,  
19                  it would be hard to say that I complied with  
20                  them.

21                  Q       Well, you did say that you  
22                  complied with the United States, federal,  
23                  state and local laws just a moment ago; is  
24                  that correct?

25                  A       My interpretation is different

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2 than what the other question is.

3 Q I will move on. Did you comply  
4 with all of the rules or regulations on any  
5 exchanges that you traded on while you were  
6 carrying out your duties under the agreement?

7 A Yes, to the best of my ability, I  
8 did.

9 Q Let's take another look at the  
10 agreement. Let's look at page 2. Under  
11 subsection A, which we just spoke about not  
12 too long ago, "leverage shall be limited to  
13 four to one initially, but promptly modified  
14 as performance results are monitored," do you  
15 see that?

16 A I see that.

17 Q While you were trading for IFL,  
18 was leverage limited to four to one?

19 MR. SEAR: You mean under this  
20 agreement?

21 MR. LANZA: Under this agreement,  
22 while you were trading under this  
23 agreement.

24 A Initially.

25 Q At a point where it went beyond